IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16507 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUSTUFA @ MUKO S/O HABIBBHAI KASMANI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 16/09/2005

ORAL JUDGMENT

1. The order of detention dated 20.06.2005 passed by the Commissioner of Police, Rajkot City in exercise of powers under Subsection 1 of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act'), is challenged as unjust, illegal, arbitrary and violative of Articles 14, 19, 21 and 22 of the Constitution of India.

2. The order of detention dated 20.06.2005 also contains the grounds for passing the said order and mainly reflects about the registration of crimes registered under the various offences punishable under Sections 379, 411, 201 and 114 of the Indian Penal Code at various police stations of Rajkot City regarding the theft of two wheeler vehicles. The detaining authority has taken into consideration the abovementioned fact as well as

statements of certain witnesses who have stated about criminal and antisocial activities of the detenue. It also states about usage of abusive and threatening language to the members of the public by showing weapons. Thereafter, the authority has arrived at the subjective satisfaction, though the detaining authority was in judicial custody, it was found by the detaining authority that the type of offences registered against the detenue, result into enlarging the detenue on bail and as the incident has also occurred in the past and the Court has granted bail. Since the petitioner detenue could not furnish the bail bond, he was in judicial custody.

3. Learned advocate Mrs. Banna Dutta for the petitioner detenue, has challenged the order of detention dated 21.04.2005 mainly on two grounds relying upon the decision in the case of **Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675** about subjective satisfaction of the detaining authority detaining the detenue, even

though such detenue is in judicial custody. The recital of usual phrases of detenue preferring bail application and grant of such application by the Competent Court of law and, thereafter again indulge into similar activities, must have foundation or basis in the backdrop of relevant materials. For arriving at a subjective satisfaction, as stated in Para-4 of the above judgment ipse dixit of the concerned officer about apprehension of detenue indulging in similar activities on enlargement of the bail is not sufficient, since preferring of bail application and released on bail both are different aspects. In the above circumstances Mrs. Banna Dutta has submitted that the order of detention is required to be quashed and set aside.

4. She has also submitted that theft of two wheelers by the detenue by itself cannot be said to have disturbed the even tempo of the public life and gravity and the magnitude of the offence levelled against the detenue cannot be said to result into the disturbance of the public order. In the

circumstances Smt. Dutta submitted that both these grounds are sufficient to quash and set aside the order of detention.

5. Mrs. Hansha B. Punani, learned Assistant Government Pleader for the respondent authorities has submitted that time and again the detenue has indulged into theft of two wheelers and even witnesses have deposed that the detenue is a dangerous person and quite often indulge into usage of abusive and threatening language in the public by showing them weapons. In the above circumstances, the satisfaction of the detaining authority that the detenue is a dangerous person is based on sufficient material and do not require any interference by this Court.

6. Considering the rival submissions and on perusal of the records and affidavit in reply, I am inclined to quash and set aside the order of detention on the ground of disturbance of the public order inasmuch as the registration of crime against detenue qua the theft of two wheelers and

the detenue indulging into illegal dealing with the sale or purchase of such vehicles by itself and stray incidences of disturbance of law and order, as stated by the witnesses cannot be said to be relevant or credible materials, for constituting the subjective satisfaction of detaining authority branding the detenue as “dangerous person” as defined under Section 2(c) of the ACT. The above offences, at the most can be said to be disturbing the law and order only and it cannot have magnitude or gravity of disturbing the public order. The following decisions of the Apex Court, amply make it clear the position of laws in this regard. In view of a decision of the Apex Court in the case of Darpan Kumar Sharma Vs. State of T.N., reported in 2003 (2) SCC 313, particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or

commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors. as under:-

“ Even an activity violating an ordinary

legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

The above circumstances and the judgments are clearly applicable in the present case, the order of detention is quashed and set aside as the same is unjust, unconstitutional, illegal and violative of Article 21 and 22 of the Constitution of India.

7. For the reasons recorded hereinabove, the order of detention dated 20.06.2005 is hereby ordered to be quashed and set aside and the detenue Mustafa @ Muko S/o. Habibbhai Kasmani is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

8. Rule is made absolute with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)amit